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June 10, 1997

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Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

Mr. William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: In the Matter of Application by Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide in-Region, InterLATA Services in Michigan, CC Docket No. 97-137

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of Comments of BellSouth Corporation and SBC Communications Inc. on Ameritech Michigan's Application for Provision of In-region InterLATA services.

Also enclosed are a computer diskette containing this document in WordPerfect 5.1 format and an extra copy to be date-stamped and returned.

Sincerely,

Austin C. Schlick /gmk

Austin C. Schlick

Enclosures

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan	CC Docket No. 97-137

To: The Commission

COMMENTS OF BELLSOUTH CORPORATION AND SBC COMMUNICATIONS INC. ON AMERITECH MICHIGAN'S APPLICATION FOR PROVISION OF IN-REGION INTERLATA SERVICES

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EXECUTIVE SUMMARY

While the Telecommunications Act of 1996 requires that the Commission consider each application filed under section 271 individually, two core principles must govern the Commission's review of all applications, regardless of the State at issue and the attractiveness of its local telephone markets to competitors.

First, as a matter of law, a Bell company may obtain interLATA relief by providing competitors access to the items Congress decided would make local entry feasible. The Bell company need not, and indeed cannot, ensure that competitors actually take advantage of each of these offerings. Rather, as long as the items are available, local markets are, by congressional definition, open. This is just as true for Ameritech in Michigan — where profit opportunities led to rapid local entry but competitors have not yet ordered all checklist items — as for SBC in Oklahoma — where SBC needed to jump-start local competition with a statement of terms and conditions. Whether the Bell company fulfills its statutory obligation to open local markets using state-approved agreements, an effective statement, or both, the obligation remains the same: to make available the items that Congress expected competitors might need to obtain from the incumbent local exchange carrier ("LEC"), regardless of whether competitors do, in fact, need them. The Commission may not extend this obligation or alter Congress' test of when markets are open.

Second, as a matter of policy, once a Bell company has opened its local exchange to competition as specified by the 1996 Act and has complied with applicable safeguards, its provision of in-region, interLATA services always will benefit long distance competition and

consumers (absent extraordinary circumstances relating to the particular applicant). The Commission has repeatedly affirmed the efficacy of regulatory safeguards in preventing anticompetitive conduct by incumbent LECs, and years of concrete experience in markets adjacent to the local exchange confirm that Bell company entry will enhance competition and lower prices.

If the Commission frames its inquiry properly — applying Congress' test for when local markets are open and assessing the relative benefits and risks of Bell company entry into in-region long distance — the result will be the one Congress intended: rapid Bell company interLATA entry as soon as the Act's requirements for open local markets are met.

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BellSouth Corporation and SBC Communications Inc. support the application of Ameritech Michigan for permission to provide in-region interLATA services. If Ameritech's factual allegations are true, then it has satisfied the statutory prerequisites for interLATA entry and should be permitted to augment long distance competition in Michigan.

I. AMERITECH IS ELIGIBLE TO APPLY UNDER SECTION 271(c)(1)(A)

Ameritech seeks interLATA entry on the basis of its state-approved, implemented interconnection agreements with Brooks Fiber, MFS and TCG. Ameritech provides ample evidence that these competitive local exchange carriers ("CLECs") meet the criteria of section 271(c)(1)(A). Application at 9-12.

A. The Commission's Analysis of the Offerings of Brooks Fiber, MFS and TCG in Michigan Will Bear upon Future Applications under Both Track A and Track B

A CLEC's status under Track A or Track B of section 271(c)(1) turns on whether it provides local telephone service to residential and business customers and offers such service exclusively or predominantly over its own facilities. Although Ameritech relies exclusively on agreements under Track A, its discussion of the "residential and business subscribers" and "facilities-based" requirements of Track A nonetheless is relevant as well for Bell companies that apply using a statement of generally available terms and conditions ("Statement") under Track B. This is true because after Track A defines a qualifying "competing provider" whose agreement would support interLATA relief, Track B allows entry on the basis of a Statement instead if no

"such provider" had requested access three months earlier.[1] Thus, any guidance that the Commission provides in this proceeding on what is required to satisfy the "residential and business" and "facilities-based" subscribers requirements of Track A also will determine which requests foreclose interLATA entry under Track B.

B. Facilities-Based Carriers Must Together Serve Residential and Business Customers

Ameritech explains that because they collectively serve both types of customers, Brooks Fiber, TCG, and MFS "together" satisfy the residential and business subscribers requirement. Application at 9 & n.7. While Brooks Fiber in fact serves both types of customers, Ameritech is correct that Track A does not necessarily require that a single CLEC serve both residential and business customers. Rather, it requires a Bell company to interconnect with "one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." § 271(c)(1)(A) (emphasis added). So long as a Bell company interconnects with one or more carriers that collectively serve both types of subscribers, the Act's requirement is satisfied. Congress' goal of ensuring that facilities-based service is feasible for all types of

[1] See S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 148 (1996) ("Conf. Rep.") (allowing Track B entry "provided no qualifying facilities-based competitor has requested access and interconnection under new section 251 by the date that is 3 months prior to the date that the BOC seeks interLATA authorization"); id. at 147 (same); 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin) ("Subparagraph (b) uses the words 'such provider' to refer back to the exclusively or predominantly facilities based [local service] provider described in subparagraph (A)."); 142 Cong. Rec. H1152 (daily ed. Feb. 1, 1996) (statement of Rep. Hastert) ("Section 271(c)(1)(B) provides that a BOC may petition the FCC for this in-region authority if it has . . . not received . . . any request for access and interconnection from a facilities-based competitor that meets the criteria in section 271(c)(1)(A).").

subscribers is achieved just as effectively by multiple carriers as by one.[2] Either way, the actual availability of competing service confirms that the Bell company's interconnection and access offerings have in fact made facilities-based entry feasible.

C. Ameritech Correctly Observes that Unbundled Network Elements Purchased by Local Competitors Count as Their Own Facilities

According to Ameritech's application, Brooks Fiber, MFS and TCG provide service using their own switches, fiber-optic networks, trunks, and loops. Application at 10-11. Although these CLECs also provide some service over loops ordered from Ameritech, the Commission recently confirmed that, at least for purposes of universal service funding, facilities purchased on an exclusive basis from a Bell company count as a CLEC's "own" facilities.[3] The Commission's approach makes equal sense in section 271 proceedings,[4] given that a CLEC retains similar control over a facility regardless of whether the CLEC constructs the facility itself, purchases it from a third party, or takes it from the Bell company as an unbundled network element ("UNE") or on a comparable exclusive basis. In each case the CLEC has control over use of the facility in

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[2] See 141 Cong. Rec. H8460, H8476 (daily ed. Aug. 4, 1995) (statement of Rep. Fields) (presence of "a facilities-based competitor which will provide the consumer with an alternative in local phone service"); 141 Cong. Rec. H8281, H8284 (daily ed. Aug. 2, 1995) (statement of Rep. Fields) (ensuring "that local telephone network is open to . . . facilities-based competitor"); 141 Cong. Rec. H8460, H8465 (daily ed. Aug. 4, 1995) (statement of Rep. Goodlatte) ("ensure either that facilities-based competition is present in the local exchange or that the Bell companies have done all that the bill requires of them before they will be permitted to offer interLATA services").

[3] Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157 ¶ 160 (May 8, 1997).

[4] Cf. id. ¶ 168 (noting "similarity of the language" in sections 271(c)(1)(A) and 214(e)).

question and thereby is able to compete with "service offerings that differ from services offered by an incumbent." Id. ¶ 160.

The Commission's decision to include purchased UNEs among a CLEC's "own" facilities is necessary, moreover, to avoid an otherwise irreconcilable tension between the eligibility provisions of section 271(c)(1) and the checklist requirements of section 271(c)(2). Congress enacted the competitive checklist to assure Bell companies that if they make all items available to CLECs, they will be permitted to augment long distance competition without regard to the business decisions of those CLECs.[5] The availability of all items, Congress believed, would allow CLECs the flexibility to build a particular facility or to purchase UNEs from a Bell company, depending upon the CLEC's business needs.

Congress could not possibly have intended both to give Bell companies an incentive to provide all checklist items to each requesting CLEC,[6] and at the same time to disqualify a Bell company from Track A interLATA relief simply because it provides items to a CLEC that would

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[5] Congress chose the competitive checklist over other tests that would have held Bell companies hostage to the business decisions of competitors. See, e.g., 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings) ("checklist" enacted as substitute for "actual and demonstrable competition test"); 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) ("competitive checklist" is sole "test of when markets are open").

[6] See 141 Cong. Rec. S8134, S8138 (daily ed. June 12, 1995) (statement of Sen. Kerrey) (long distance entry "is the carrot that is being offered" for opening local markets); 141 Cong. Rec. H8465 (statement of Rep. Goodlatte) (interLATA entry provisions provide "strong incentive for [Bell companies] to comply with the requirements of this legislation"); First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15505, ¶ 4 (1996) ("Local Interconnection Order") (open local markets "pave the way for enhanced competition in" long distance markets).

otherwise construct its own facilities. It makes no sense to read the Act so that a Bell company's desire to qualify under Track A of section 271(c)(1) would undermine its incentive to provide checklist items under section 271(c)(2).

II. AMERITECH SATISFIES THE COMPETITIVE CHECKLIST OF SECTION 271(c)(2)

The Act not only frees CLECs to compete as they deem fit, but also enables Bell companies to qualify for interLATA relief even if the entry decisions of those CLECs do not match regulators' ideal visions for local competition. Congress enacted a "pro-competitive, de-regulatory national policy framework" under which the market, not regulators, would determine the pace of competition.[7] This Commission may ensure through its section 271 inquiry only that Ameritech will make all checklist items available upon request, not that Ameritech actually finds CLECs willing to purchase particular checklist items.

A. CLECs' Failure to Order Switching or Any Other Item Is Irrelevant

Under the Act, neither Ameritech, nor any regulator, has control over the fact that no CLEC in Michigan "has placed an order for unbundled local switching" or "has committed to buy unbundled local switching by a date certain." Application at 16, 19. Although State commissions may impose interconnection deadlines in arbitrated agreements, § 252(c)(3), Congress' deregulatory framework otherwise leaves it to CLECs to decide when they will order particular

[7] Conf. Rep. at 1; see 141 Cong. Rec. S7881, S7895 (daily ed. June 7, 1995) (statement of Sen. Hollings) ("We should not attempt to micro-manage the marketplace."); 141 Cong. Rec. H8281-82 (daily ed. Aug. 2, 1995) (statement of Rep. Bliley) (Congress wanted to promote "competition, and not Government micro-management of markets"); accord Local Interconnection Order, 11 FCC Rcd at 15509, ¶ 12.

network elements. That business decision has no bearing upon a Bell company's eligibility for interLATA entry.

Ameritech's experience in Michigan demonstrates precisely why Congress did not intend to delay Bell company interLATA entry in the hope that all checklist items might someday be purchased. Michigan is a major, industrial State with the ninth highest local exchange carrier revenues in the nation.[8] Michigan apparently offers local competitors substantial profit opportunities, for CLECs have entered local markets in Michigan rapidly, and Ameritech has ported nearly 25,000 numbers for them. Application at 52. Yet, nearly a year and a half after Congress passed the 1996 Act, CLECs still have not purchased all checklist items. If this is the case in Michigan, it almost certainly will be the case in smaller and less urbanized States that are not as attractive to CLECs.

Congress did not intend to impose the significant, needless delays that would follow from tying interLATA entry to actual purchases of all checklist items.[9] To the contrary, legislators expected entry under Track A could be almost "immediat[e]." 142 Cong. Rec. S687, S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux). Indeed, Congress specifically anticipated that a single cable provider's entry into the local telephone business in a State might lead the

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[8] FCC, Statistics of Communications Common Carriers, 1995-1996 Edition, Table 2.13 (1996).

[9] See 142 Cong. Rec. E261, E262 (statement of Rep. Paxon) (extending Feb. 1 remarks) ("Congress did not intend to permit the Bell operating companies' competitors to delay their entry into the in-region interLATA market by refusing to include checklist items in the interconnection agreements.").

Commission to approve a section 271 application,[10] even though that cable company would have no need to buy local loops from the Bell company.[11] As Ameritech explains, Congress required only that all checklist items be available, not that they actually be purchased. See Application at 18-21. Any "actual purchase" requirement would unlawfully extend the checklist requirements in defiance of section 271(d)(4).

B. By Virtue of MFN Clauses, Brooks Fiber, MFS, and TCG Have Access Extending Beyond the Express Terms of Their Individual Agreements

Although Track A requires Ameritech to show that it has actually implemented an agreement and interconnected with one or more qualifying, Track A carriers — here, Brooks Fiber, MFS, and TCG — Ameritech may refer to all of its approved interconnection agreements to demonstrate that these CLECs have access to the 14 checklist items. Ameritech explains that Brooks Fiber, MFS, and TCG have access to checklist items not only on the terms specified in their agreements, but also on terms included in the AT&T and Sprint agreements. Application at 16. This is true because Ameritech's agreements with Brooks Fiber, MFS, and TCG contain "most favored nation" (or "MFN") clauses that provide them access to the provisions of other state-approved agreements. Id. In addition, section 252(i) of the 1996 Act guarantees CLECs

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[10] See Conf. Rep. at 148 (cable companies would provide "the sort of local residential competition that has consistently been contemplated"); H.R. Rep. No. 204, 104th Cong., 2d Sess. 77 (1995) ("House Rep.") (same); 142 Cong. Rec. H1145, H1149 (daily ed. Feb. 1, 1996) (Statement of Rep. Fields) ("it has always been within our anticipation that a cable company would in most instances and in all likelihood be that facilities-based competitor in most States — even though our concept definition is more flexible and encompassing").

[11] House Rep. at 77 ("cable industry . . . has wired 95% of local residences . . . and thus has a network"); Conf. Rep. at 148 (same).

access to any "interconnection, service, or network element provided under any agreement approved under this section."

In many States, moreover, qualifying Track A CLECs also will have access to checklist items via an effective Statement. Indeed, a Bell company may seek to encourage local competition (and allow its own interLATA entry under Track B) by obtaining state approval of a Statement, but also interconnect with a qualifying CLEC and file a Track A application with the Commission.

So long as the qualifying, Track A CLEC in question has access to their terms consistent with its own state-approved agreement, a Bell company may rely on its agreements with other CLECs and upon an effective Statement to demonstrate checklist compliance.[12] The Bell company need only show that the "access and interconnection provided" to the Track A CLEC "meets the requirements of" the competitive checklist. § 271(c)(2). The checklist will be "fully implemented" regardless of whether the CLEC obtains its "access" directly under the express terms of its agreement or indirectly from some other source. § 271(d)(3)(A)(i).

C. Isolated Implementation Issues Cannot Undermine Checklist Compliance

Bell companies and CLECs bear joint responsibility for ensuring that the checklist items a Bell company provides meet the business needs of each individual CLEC. The Act relies upon the parties to negotiate and implement individual interconnection arrangements, and it provides for

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[12] See, e.g., 142 Cong. Rec. E261, E262 (daily ed. Feb. 29, 1996) (statement of Rep. Paxon) (where a "competitor [does] not want every [checklist] item" "the Bell operating company would satisfy its obligations by demonstrating, by means of a statement similar to that required by section 271(c)(1)(B), how and under what terms it would make those items available to that competitor and others when and if they are requested").

intervention by state regulators in those instances where the parties cannot work out their differences.[13]

The Commission's section 271 proceedings thus are not an appropriate forum for opponents to raise any and all implementation "problems." If a CLEC is dissatisfied with a Bell company's implementation of their agreement, it should inform the Bell company of the perceived problem so that the parties can resolve it. If a dispute remains, either party may seek enforcement of the agreement in the appropriate forum. This Commission should not attempt to resolve such disputes, prematurely and on an incomplete record, in section 271 proceedings. Indeed, it will be difficult enough for the Commission to evaluate in 90 days those matters that must be assessed: CLECs' offerings under section 271(c)(1); the compliance of a Bell company's agreements and/or Statement with the checklist of section 271(c)(2); the Bell company's satisfaction of section 272's safeguards; and the adequacy of those safeguards in ensuring that Bell company interLATA entry will serve the public interest.[14]

Moreover, even if the Commission had the resources to do so, there would be no reason for it to delve into every implementation dispute. A mere implementation glitch, after all, cannot be equated with checklist non-compliance. As Ameritech explains, for example, some growing pains are inevitable "when two or more companies must interconnect separate, complex 'back-

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[13] See, e.g., § 252(a)(2) (mediation by state commission); § 252(b) (parties may request state arbitration after 135 days).

[14] As Chairman Hundt has explained, the volume of applications that likely will be received and the 90-day statutory deadline will "press [the Commission's] resources very hard." Statement of Chairman Hundt Regarding Ameritech's Filing to Provide In-Region Long Distance Services in Michigan (FCC rel. Jan. 2, 1997).

end' systems through interfaces." Application at 27. If the Commission finds that Ameritech has indeed demonstrated its "commitment to promptly resolve issues . . . as they arise," id. at 27-28, that will put to rest any efforts to defeat Ameritech's application based on implementation grievances. Congress established objective criteria for opening local markets through the checklist and specific procedures for resolving related disputes. It did not give CLECs veto power over a Bell company's interLATA entry based upon their subjective, unilateral dissatisfaction with Bell company performance.

III. AMERITECH'S INTERLATA ENTRY WILL SERVE THE PUBLIC INTEREST

Ameritech demonstrates that its entry will infuse sorely needed competition into the long distance business in Michigan and that open local markets and regulatory safeguards will prevent Ameritech from engaging in any anticompetitive conduct upon entry. Application at 64-89. In so doing, Ameritech focuses on the proper question and answers that question correctly. The Commission must resist efforts by Ameritech's opponents to distract the Commission from the salient facts by urging an alternative, unlawful public interest inquiry.

A. The Commission Must Compare the Competitive Benefits of Ameritech's InterLATA Entry with Any Competitive Harm and May Not Impose An Additional Test of Local Competition

The public interest inquiry requires the Commission to decide whether Ameritech's interLATA entry will, on balance, enhance or hinder long distance competition. Congress anticipated that by imposing regulatory safeguards (via section 272) and opening local markets (via sections 251, 252 and 271(c)) it could end the MFJ restrictions and allow Bell companies to augment long distance competition, without risk of anticompetitive conduct. Legislators viewed

the Act's extensive safeguards as more than adequate to prevent anticompetitive conduct by Bell company entrants in long distance. See 141 Cong. Rec. S7972, S8012 (daily ed. June 8, 1995) (statement of Sen. Hollings) ("we have had every particular safeguard that you can imagine, that the lawyers could think of . . . to make sure that it works and works properly for the public interest"). Moreover, Congress expected that the open local market provisions of the 1996 Act would remove the traditional rationale for excluding Bell companies from long distance in the first place.[15] Just to be sure, however, Congress wanted an expert agency — the Commission — to confirm that regulatory safeguards and open local markets would prevent Bell companies from engaging in anticompetitive conduct, and that Bell company long distance entry would serve the public interest.[16]

If the Commission confirms here that its regulatory safeguards are capable of preventing anticompetitive conduct by Ameritech, then its public interest inquiry will be virtually at an end.

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[15] Compare United States v. AT&T, 524 F. Supp. 1336, 1352, 1357 (D.D.C. 1981) (imposing restrictions on manufacturing and long distance to prevent Bell companies from using "local exchange monopolies to foreclose competition in the terminal equipment market" and in "intercity services market") with 141 Cong. Rec. S8127, S8128 (daily ed. June 12, 1995) (statement of Sen. Inhofe) (legislation "designed to remove restrictions") and 141 Cong. Rec. S8134, S8173 (daily ed. June 12, 1995) (statement of Sen. Kempthorne) ("The goal of Congress in regulatory reform should be to remove existing Federal roadblocks that limit productivity and creativity and innovation.").

[16] See 141 Cong. Rec. S7942, S7969 (daily ed. June 8, 1995) (statement of Sen. Lott) (public interest test allows Commission to confirm that local interconnection requirements and regulatory safeguards "make sure that we have a fair and level playing field"); 141 Cong. Rec. S7881, S7888 (daily ed. June 7, 1995) (statement of Sen. Pressler) ("After Bell companies satisfy all the requirements, the FCC must, in effect, certify compliance by making a public interest determination.").

After all, both Congress[17] and the Commission[18] already have found that long distance callers would potentially benefit from competitive entry by local exchange carriers. Indeed, the Commission has long held that the benefits of new entry in long distance presumptively outweigh any risk of harm,[19] even where the long distance entrant is an incumbent local exchange carrier.[20]

The Commission's pubic interest inquiry thus should focus on evaluating the competitive risks of Bell company interLATA entry and weighing those risks (if any) against the benefits to

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[17] See 141 Cong. Rec. S686, S687 (daily ed. Feb. 1, 1996) (statement of Sen. Pressler) (1996 Act "will lower prices on long-distance calls through competition"); 141 Cong. Rec. S7881, S7889 (daily ed. June 7, 1995) (statement of Sen. Pressler) (long distance industry is "oligopolistic"); 141 Cong. Rec. at S7906 (statement of Sen. Lott) (long distance industry displays "at best, limited competition").

[18] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Docket No. 96-149, FCC 97-142, ¶ 134 (rel. Apr. 18, 1997) ("BOC Non-Dominance Order") ("the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies").

[19] See Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. off of the Island of Puerto Rico, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) ("plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public") (emphasis added); MTS-WATS Market Structure Inquiry, 81 FCC 2d 177, 201-02, ¶ 103 (1980) (Commission will "refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects").

[20] See Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. off of the Island of Puerto Rico, 2 FCC Rcd at 6604, ¶ 30 (Commission's "open entry policy," "clearly contemplate[s] competitive entry by independent local exchange companies") (citing MTS-WATS Market Structure Inquiry, 81 FCC 2d at 186).

long distance consumers.[21] The Commission may not delay the public benefits of Ameritech's interLATA entry based on a policy judgment about what local interconnection, network access, and resale policies are desirable in Michigan. Congress believed that it could open local markets most effectively, not by imposing local competition tests beyond a Bell company's control,[22] but rather by enacting a competitive checklist that sets forth concrete obligations in plain terms. Congress forbade the Commission from second-guessing its judgment or modifying its checklist "by rule or otherwise." § 271(d)(4) (emphasis added). Indeed, the Chairman of the Conference Committee reassured Senators opposed to the public interest inquiry that "[t]he FCC's public-interest review is constrained by the statute" as "the FCC is specifically prohibited from

[21] On this point, the Commission must obtain the expert advice of the Department of Justice, which had experience under the MFJ in addressing the similar, central question "whether there is any substantial risk that a BOC's monopoly power will be used to impede interexchange competition." Response of the United States to Comments on its Report and Recommendations Concerning the Line-of-Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment, United States v. Western Elec. Co., No. 82-0192 at 49 (D.D.C. Apr. 27, 1987); see § 271(d)(2)(A); 142 Cong. Rec. H1145, H1178 (daily ed. Feb. 1, 1996) (statement of Rep. Sensenbrenner) ("FCC's reliance on the Justice Department is limited to antitrust related matters"). The Department has found under the 1996 Act that: "InterLATA markets remain highly concentrated and imperfectly competitive, . . . and it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits." Evaluation of the United States Department of Justice, Application by SBC Communications Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121, at 44 (FCC May 16, 1997).

[22] 141 Cong. Rec. S8310, S8319-8321 (daily ed. June 14, 1995) (defeat of Senator Kerrey's amendment that would have required "substantial" competition); 141 Cong. Rec. H8424, H8454 (daily ed. Aug. 4, 1995) (statement of Rep. Bunn) (House's rejection of test that would have required CLECs to offer local services to 10% of customers).

limiting or extending the terms used in the competitive checklist." 141 Cong. Rec. S7942, S7967 (daily ed. June 8, 1995) (statement of Sen. Pressler).

The statutory public interest inquiry thus authorizes the Commission to evaluate the likely effects of Ameritech's interLATA entry on long distance competition, but not to substitute its judgment for Congress' on whether satisfaction of the competitive checklist is the best way to open local markets in Michigan.

B. Regulatory Safeguards, Open Local Markets, and Concrete Market Experience Confirm that Ameritech's Entry Will Benefit the Public

Although Congress may have asked for additional confirmation from regulators that its statutory prerequisites for interLATA entry would suffice, the Commission has since noted the effectiveness of regulatory safeguards and market constraints. In developing its accounting and non-accounting safeguards orders, approving the PacTel/SBC merger, deciding that Bell companies should be treated as non-dominant carriers in the long distance business, and in other proceedings, the Commission has affirmed the adequacy of old and new safeguards to prevent

cost-misallocation,[23] discrimination,[24] predatory practices,[25] and other forms of hypothetical misconduct that Ameritech's opponents might dream up.

Ameritech relies on these safeguards, as well as open local markets in Michigan, to demonstrate that its entry will enhance long distance competition. Application at 71-93.[26]

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[23] BOC Non-Dominance Order ¶¶ 104-06 (price caps reduce incentives to misallocate costs, and existing safeguards "constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur"); Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 61 Fed. Reg. 39397, ¶ 136 (rel. July 29, 1996) ("Non-Accounting Safeguards NPRM") (Commission's price cap policies "reduc[e] the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services"); First Report and Order, Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17550, ¶ 25, 17551, ¶ 28, 17586, ¶ 108 (1996) ("Accounting Safeguards Order") (rules "will effectively prevent predatory behavior that might result from cross-subsidization").

[24] BOC Non-Dominance Order ¶¶ 111-19 (numerous protections against discrimination); Memorandum Opinion and Order, Applications of Pacific Telesis Group and SBC Communications, Inc., FCC No. 97-28 ¶ 53 (rel. Jan. 31, 1997) (price discrimination "is relatively easy for us and others to detect, and is therefore unlikely to occur"); First Report and Order, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 5 Comm. Reg. (P&F) 696, ¶ 327 (1996) ("the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations" and "will also facilitate detection of potential violations of the section 272 requirements").

[25] See, e.g., BOC Non-Dominance Order ¶¶ 108, 128-29 (dismissing fears of predation against the established long distance incumbents and concluding that risk of price squeezes can adequately be addressed through Commission procedures and the antitrust laws); Non-Accounting Safeguards NPRM ¶ 137 (successful predation "unlikely").

[26] The Department of Justice, in its role as a party to the MFJ, explained that removing barriers to entry into local telephone markets "would reduce the potential for abuse" of control over any remaining local monopoly power "in several ways." Response of the United States to Comments on its Report and Recommendations at 49. The Department pointed out that the development of competing local networks, standardization of interconnection with those

Ameritech also points to the intense price competition in Connecticut that has followed SNET's long distance entry. Application at 68-69. Connecticut's deregulation is just one in a string of examples proving that whenever incumbent LECS are allowed to enter markets adjacent to the local exchange — including long distance — consumers benefit from additional competition without any negative consequence.[27]

New Jersey Corridors. NYNEX and Bell Atlantic for more than a decade have originated interLATA calls in their regions in geographic corridors running from New York City and Philadelphia into New Jersey. When granting this authority, the MFJ Court expressed concern that allowing such service would give "the Operating Companies the same incentive to discriminate against new entrants that they had while part of the integrated [Bell] system," and "may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic."[28] Yet NYNEX and Bell Atlantic do not dominate corridor traffic. AT&T acknowledges, for instance, that Bell Atlantic has no more than 20 percent of the corridor business.[29] Moreover, AT&T credits Bell Atlantic's widespread marketing of "sav[ings] over

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networks, and downward pressure on local rates from competition and state regulatory policies would address concerns regarding discrimination and cross-subsidy. Id. at 49-50.

[27] Ameritech discusses some of these examples in an affidavit. See Gilbert/Panzar Aff., ¶¶ 43-44, 50-59 (discussing GTE's ownership of Sprint and Ameritech's experience in wireless, intraLATA toll, information services, and 800 services and WATS).

[28] United States v. Western Elec. Co., 569 F. Supp. 990, 1018-19 & n.142, 1023 (D.D.C. 1983).

[29] AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration at 3, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Oct. 23, 1996) ("AT&T Waiver Petition"), denied, Order, Policy and Rules

AT&T's basic rates" for the market share that it has achieved. AT&T Waiver Petition at 3. Indeed, because Bell Atlantic's corridor rates are as much as one-third lower than AT&T's, id. Attachment A, AT&T and MCI asked the Commission for authority to reduce their own long distance rates for customers in the corridors.[30] AT&T and MCI have in fact conceded that consumers in these corridors have benefitted from Bell company competition.[31]

GTE's Ownership of Sprint. Likewise, AT&T and MCI have had to admit that GTE's position in the local exchange never enabled it to "achieve market power" in its in-region interLATA market when it owned Sprint.[32] Experience disproved theories that because GTE "provide[d] in the same market both local monopoly telecommunications services and competitive long distance services, it" necessarily would have "the incentive and ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier." United States v. GTE Corp., 603 F. Supp. 730, 732

Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended; AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, 12 FCC Rcd 934 (1997).

[30] See AT&T Waiver Petition at 1, 5; MCI Comments, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 at 1 (FCC fiied Nov. 18, 1996) ("MCI Comments").

[31] See AT&T Waiver Petition at 5 (consumers in corridors,"benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's arguments).

[32] MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State, United States v. Western Electric Co., No. 82-0192 at 58 (D.D.C., Dec. 9, 1994); see AT&T's Opposition to the Four RBOCs' Motion to Vacate the Decree, United States v. Western Electric Co., No. 82-0192 at 159 (D.D.C., Dec. 7, 1994).

(D.D.C. 1984) (citing DOJ's concerns). GTE's decision to sell Sprint in the late 1980s confirmed that local exchange carriers cannot reap monopoly profits, or carry out anti-competitive strategies, upon entering the interLATA market in their home regions.

Cellular Services. If the interexchange carriers' claims were correct — and Bell companies could discriminate against rival interexchange carriers upon entering long distance — then Bell companies should have been able to accomplish the same anticompetitive feat in cellular markets. Cellular carriers and interexchange carriers, after all, have similar local interconnection requirements. Yet, Bell company participation in cellular markets has dramatically benefitted consumers. Cellular prices have declined and output is growing: cellular bills have been cut nearly in half;[33] cellular subscriptions climbed from near zero to more than 42 million in just a decade and a half;[34] and cellular subscriptions continue to increase twice as fast as wireline subscriptions.[35]

Moreover, far from being dominated by the Bell companies, "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs." Applications of Craig O. McCaw and AT&T Co., 9 FCC Rcd 5836, 5861-62, ¶ 38 (1994), aff'd sub nom. SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995). These small competitors have not been victimized by discrimination in interconnecting to wireline

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[33] See CTIA, The Wireless Sourcebook 15 (Spring 1996) (average monthly bills dropped from $96.83 in December 1987 to $51.00 in December 1995).

[34] Cellular One of Tennessee (GTE) and the Ingram Group, Cellular Phones: Good Traveling Companion for the Holidays, Business Wire, Dec. 20, 1996.

[35] Compare CTIA, The Wireless Sourcebook 12 (Spring 1996) (9.6 million new cellular subscriptions during year ended December 1995) with FCC, Trends in Telephone Service at Tables 14 & 17 (Mar. 1997) (3.9 million new wirelines during year ended June 1995).

exchanges. To the contrary, the Commission has confirmed "the infrequency of interconnection problems" between LECs and unaffiliated cellular providers. Eligibility for the Specialized Mobile Radio Servs., 10 FCC Rcd 6280, 6293, ¶ 22 (1995). Confirming that they know that incumbent LECS have no anticompetitive advantage in cellular, Bell companies have invested in cellular businesses outside their regions and competed head-to-head with other Bell companies. AT&T has gone even further, buying the nation's largest cellular carrier (McCaw) for $17 billion and investing billions more in PCS.

Information Services. The information services market offers another example in which dire predictions of Bell company misconduct have been proved wrong by robust competition. Although competing providers claimed in 1987 that Bell companies would use their position in the local exchange to hinder competition upon entering the information services market,[36] that market has since become one of the fastest growing segments of the U.S. economy. U.S. Commerce Dep't, Industrial Outlook 1994 25-1. The Bell companies have contributed to the growth, see Bell Operating Co. Safeguards, 6 FCC Rcd 7571, 7619-21 & n.201 (1991), without achieving large market shares or the great success that opponents predicted would follow from anticompetitive conduct.

Out-of-Region Long Distance. Interexchange carriers opposed Bell company efforts to offer out-of-region long distance service under the MFJ, based on a prediction that Bell companies would discriminate against competing interexchange carriers when providing in-region

[36] See United States v. Western Elec. Co., 673 F. Supp. 525, 565-67 (D.D.C. 1987) (citing comments of Dun & Bradstreet and Metscan), aff'd in part, rev'd in part, 900 F.2d 283 (D.C. Cir. 1990).

interconnection.[37] Now that relief has been afforded, 47 U.S.C. § 271(b)(2), Bell companies have become competitors in wireline long distance markets outside of their own regions. Neither BellSouth nor SBC is aware of any allegations (much less findings) that the misconduct formerly predicted by interexchange carriers has occurred.

CONCLUSION

Each section 271 application will present its own unique factual issues that will require thorough investigation and in-depth analysis by this Commission and its state counterpart. More important than the Commission's answer to any single factual question, however, is its overall approach to these questions. If the Commission implements the Act as Congress enacted it — accepting Congress' definition of an open local market but following Commission precedent on the adequacy of safeguards and the likely competitive effects of Bell company entry — the Commission will reach the correct result in each case. Bell companies will be permitted to augment long distance competition as soon as they meet Congress' test for open local markets and section 272's safeguards: no sooner and no later.

[37] See, e.g., MCI Comments, Southwestern Bell's Waiver Request to Provide Interexchange Service Waiver No. 20202 at 4 (FCC Aug. 1, 1994) (predicting discrimination intended to "damag[e] the competitor's services and reputation on a national basis") (citation omitted).